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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION, ETC., *et al.*,

Petitioners,

v.

CRATON LIDDELL, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED

The settlement of a class action to remedy racial segregation and discrimination in public schools of the St. Louis metropolitan area provides for voluntary interdistrict busing to suburban schools of up to one-half of the black pupils residing in the city district. Petitioners objected that the terms of settlement emphasized interdistrict busing to the detriment or frustration of other provisions intended to improve schools used by the predominantly black student population in the city. The settlement envisions that at least one-half of the black student population residing in the city will continue to attend one race schools within the city district. The question presented is,

> Whether the Due Process Clause of the Fifth Amendment precludes federal court approval of a class action settlement without a reasoned response to the objections of plaintiff class members that the settlement provides disparate relief to different members of the same class where all have been subjected to the identical harm of racial segregation and discrimination.

PARTIES TO THE PROCEEDING

Petitioner North St. Louis Parents and Citizens for Quality Education is an unincorporated association including members of the plaintiff classes, primarily parents of black children attending public schools in the City of St. Louis. Other petitioners are William Upchurch, Vivian Ali, and Dorothy Robbins, individual members of said classes and the petitioner association who objected to the settlement in the courts below. In addition to Craton Liddell, the respondents under Rule 19.6 include other representatives of the plaintiff classes, boards of education in the St. Louis metropolitan area, the City of St. Louis and certain of its officials who are petitioners in No. 83-1386, the State of Missouri and certain of its officials who are petitioners in No. 83-1721, and the United States. The respondents are listed in the caption to the opinion of the court of appeals which is set out in a separate appendix to the petition in No. 83-1721 at pp. 1a-13a.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners, North St. Louis Parents and Citizens for Quality Education, etc., *et al.* pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in *Craton Liddell, etc., et al.* v. *North St. Louis Parents and Citizens for Quality Education, etc., et al.*, No. 83-2220 below.

OPINIONS BELOW

The opinion of the court of appeals is not yet officially reported. It is reproduced in No. 83-1386 Pet. App. A406-A481 and No. 83-1721 Pet. App. 1a-94a.[1] The opinion of the district court is reported at 567 F.Supp. 1037 and is reproduced in No. 83-1386 Pet. App. A1-A51 and No. 83-1721 Pet. App. 95a-147a.

JURISDICTION

The judgment of the court of appeals was entered on February 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part: "... nor shall any person ... be deprived of life, liberty, or property, without due process of law. ..."

STATEMENT OF THE CASE

This case originated in 1972, as a class action against the Board of Education of the City of St. Louis to remedy racial segregation and discrimination in the city's school system.

[1] The petitions in No. 83-1386, *Hon. Ronald A. Leggett, et al.* v. *Craton Liddell, et al.*, and No. 83-1721, *State of Missouri, et al.* v. *Craton Liddell, et al.*, also seek review of the judgment of the court of appeals in this case. Materials required to be reproduced by Rule 21(k) are included in those previously filed petitions and the appendices thereto. We refer to such petitions and appendices where appropriate, rather than duplicating the materials found there.

Since that time other parties have been joined, including suburban school districts and the State of Missouri. Although the case originally involved only a claim of intradistrict segregation and discrimination against the city school district, it subsequently was expanded to include interdistrict claims against suburban school districts in the metropolitan area.

In 1980, the city school district and the State of Missouri were found liable on the intradistrict claim. The court-ordered remedy included both the implementation of a mandatory intradistrict desegregation plan within the city public school system and the development of a plan to encourage voluntary transfers between the city school district and suburban school districts.

On July 5, 1983, the United States District Court for the Eastern District of Missouri approved a settlement resolving the interdistrict phase of this litigation. It provides several forms of relief including interdistrict busing. At any given time, the busing option may be utilized by up to one-half of the approximately 30,000 black pupils who otherwise would be in one race city schools. Under the settlement the State of Missouri was ordered to pay receiving districts the full cost of educating the students who are bused to those districts in addition to the full cost of busing. It was ordered to continue one-half of the normal state aid to the sending district for each student who is bused to another district. The settlement also has provisions which are intended to improve the general quality of education within the city. The state and city were ordered to share the cost of such improvement equally.

Petitioners, after being denied the opportunity to intervene on behalf of black students who would continue to use the city schools, filed written objections to the proposed settlement. They asserted that the settlement placed disproportionate emphasis on interdistrict busing to the detriment of those black students who will remain in predominantly black city schools.

The district court made no response to the substance of petitioners' objections and did not evaluate the adequacy of the

quality education provisions in relation to the objections. The opinion noted only that opposition to the settlement existed, that it was not overwhelming in light of the nature of the suit, and that it had been considered. No. 83-1386 Pet. App. A19-20; No. 83-1721 Pet. App. 113a-115a.

On February 8, 1984, the United States Court of Appeals for the Eighth Circuit affirmed the settlement with modifications. The court struck certain quality education provisions as being unrelated to the integration process.

The Eighth Circuit ruled that the failure of the district court to make a reasoned response to petitioners' objections had not deprived them of due process of law because the settlement contains quality education provisions to compensate students who do not bus. It made no assessment of the adequacy of the quality education provisions for that purpose. 83-1386 Pet. App. A460-461; No. 83-1721 Pet. App. 71a-72a.

REASON FOR GRANTING THE WRIT

The Court of Appeals has Decided an Important Question of Federal Law Which has Not Been, But Should Be, Settled by This Court.

Achieving equal educational opportunities for children who are subject to the continuing effects of racial segregation and discrimination is a difficult task that often requires a balancing of competing interests. Improved educational programs and various busing options to achieve the integration which would have occurred in the absence of a constitutional violation are both available as remedies. When the focus of a desegregation plan minimizes and even impedes educational improvement for a significant portion of the victims in order to provide racial integration for others, however, the Due Process Clause of the Fifth Amendment demands at least a reasoned response to the objections of the former.

The importance of fashioning a remedy that is fair and equitable to all parties who suffer constitutional harm is indisputable. A remedy must be achieved that addresses and corrects the specific deficiencies that have resulted from segregation or discrimination. If this is not accomplished, the continuing inequities will not be cured and the remedy fails.

The settlement approved by the courts below fails in just this way. It provides a grossly disparate remedy to some black students who receive virtually all the relief to which they could be entitled and possibly more. Other black students, subject to the identical constitutional harm, receive comparatively little and may even be worse off. The decisions below have far reaching consequences on the rights to which victims of discrimination within a class are entitled. Because of the importance of assuring equal educational opportunities to all, the decision of the court of appeals should be reviewed by this Court.

a. The remedies were not tailored to continuing effects of the constitutional violations being settled.

This Court has stated that "once a constitutional violation is found, a federal court is required to tailor the scope of the remedy" to fit "the nature and extent of the constitutional violation." *Hills* v. *Gautreaux*, 425 U.S. 284, 293 (1976).

This principle serves as an important limitation on the scope of judicial authority and was recently reaffirmed by this Court in *General Building Contractors Association* v. *Pennsylvania*, 458 U.S. 375, 399 (1982).

> We read these earlier decisions as recognizing "fundamental limitations on the remedial powers of the federal courts." 425 U.S. at 293. Those powers could be exercised only on the basis of a violation of law and could extend no farther than required by the nature and the extent of that violation.

In *Milliken* v. *Bradley,* 433 U.S. 267, 282 (1977), this Court stated that the remedy in a school desegregation case should restore the victims of discrimination "to the position they would have occupied in the absence of such conduct." 433 U.S. at 282. The remedy should compensate. It should not subsidize one group of victims to the detriment of another. Any other rule would destroy the underlying rationale of the class action device, and would undermine the most fundamental principles of due process. Contrary to established principles of law, that is precisely what has been done by the settlement here at issue.

The Seventh Circuit has applied the principle of fairness to all class members in a case involving alternative settlement options. *In re General Motors Corp. Engine Interchange Litigation,* 594 F.2d 1106 (7th Cir. 1979). A settlement in which class members were given a choice between releasing all claims in exchange for a cash payment or losing their federal claims while retaining their state claims had been approved by the district court. The court of appeals reversed.

> As to [class members who refuse the cash payment] the "settlement" is not a settlement; it is merely an offer to settle with a penalty, the dismissal of their federal claims, if they do not accept.
>
> . . . By the terms of the order of the trial court, subclass members who do not sign the release give up their [federal] claims and the opportunity to be represented in the class action in return for nothing.
>
> . . . The dismissal of nonconsenting subclass members' claims would serve solely to benefit GM or those subclass members who accept the settlement. Reconciling such a "settlement" with notions of fair play and justice is impossible.

594 F.2d at 1135-36. The court emphasized that fundamental principles were involved even though 99.97% of the class members had indicated no objection to the settlement. It

further observed that even if a majority affirmatively supported the settlement, this would not "justify the substantial injustice to the individual rights of the minority that the form of settlement proposed here would work." 594 F.2d at 1137. In this case no more than one-half of the black pupils in the plaintiff classes will be able to utilize the busing option.

b. The settlement provides disparate relief to different members of the same class.

While differences inevitably can be found between commercial situations and civil rights issues, the central principle requiring equitable treatment of all class members has universal application.[2] The economic benefits of the settlement here at issue are not distributed equitably.

For example, state funding allocations are substantially less for schools that send students, primarily in the city district, than for the schools that receive them, primarily in suburban districts. According to the settlement, the sending school district will receive one-half the state aid normally allotted for every student who is bused to another district. The receiving school district, on the other hand, will receive state funds to cover the full cost of educating such pupils in addition to the full cost of busing. Thus, the allegedly offending suburban districts will receive a substantially disproportionate amount of the state funds which the settlement provides to compensate for harm to the plaintiff classes generally. Moreover, the parents of black children residing in the city must bear their share of the city district's obligation to fund the settlement's quality education provisions. The settlement imposes no such burden on the suburban school districts.

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[2] It should be noted that, although the class action device provides a vehicle for furthering the policies underlying the law, it is primarily a device for vindicating the rights of individual class members. *In re General Motors Litigation*, 594 F.2d at 1128 n.33.

c. There was no reasoned response to petitioners' objections.

The objections raised by petitioners to the settlement were substantial. They not only questioned the scope of the busing remedy, but also the adequacy of the quality education provisions to remedy the continuing inequality suffered by black students who remain in city schools.[3]

Whenever a settlement attempts to compromise the legal rights of class members over their objections, it must comport with the Due Process Clause of the Fifth Amendment. *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950); *Mandujano* v. *Basic Vegetable Products Inc.*, 541 F.2d 832, 835 (9th Cir. 1976).

In *Mandujano,* the Ninth Circuit set out minimum procedural safeguards necessary to protect the interests of objecting class members which may be put at risk by pressure to settle complex litigation.

> Each objection so made must become a part of the record of the case. The trial court before approving a proposed settlement must review carefully these objections. Those determined to be substantial cannot be rejected without an opportunity to be heard.
>
> . . .
>
> The hearing which an objection of substance makes necessary must be sufficient to enable the trial court to set forth on the record a reasoned response thereto. *Such findings of fact and conclusions of law as may be necessary to support the response must also appear on the record.*

541 F.2d at 835-6. (Emphasis supplied).

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[3] It is well settled that the proponents of any class settlement always bear the burden of proof on the issue of fairness. Manual for Complex Litigation § 1.46 (4th Ed. 1978). *Accord, In re General Motors Litigation,* 594 F.2d at 1126 n.30.

The necessity of adequate findings on the record to support a remedy has been stressed repeatedly by this Court in civil rights cases. (See, *Hills, supra,* 425 U.S. at 293; *Milliken, supra,* 418 U.S. at 744-45 and 433 U.S. at 280; *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 16 (1970); and *Dayton Board of Education* v. *Brinkman,* 433 U.S. 406, 420 (1977).

The decisions below fail to meet this standard on facts which warrant that they do. Neither court even addressed the substance of petitioners' objections to disproportionate emphasis on busing and the resulting inadequacy of the quality education provisions for their intended purpose of compensating black students who do not bus.

Among the specific objections to the settlement raised by petitioners was that the settlement's emphasis on interdistrict busing of black children to suburban districts would serve to attract the brightest black children away from the city thereby stigmatizing and diluting the quality of city schools, particularly in the predominantly black areas of north St. Louis. Such a "brain drain" could cause a psychological detriment that would be impossible to overcome with improved funding for quality education. Parents of youngsters might feel it was necessary for their children to be bused in order to get the best possible education.

The district court made no findings that the proposed quality education provisions of the settlement would give those students who do not bus an educational opportunity comparable to those who do. Such findings could have included, for example, a specific comparison of the quality education provisions with the curriculum offered in the better suburban schools. Such findings would have been directly responsive to the concerns of petitioners as expressed by their spokesman in the district court.

> We don't feel that black parents or black children have, as their primary interest, the achievement of integration. We feel that they have historically tried to achieve quality education in any way in which they could and many parents begrudgingly sent their children far away from their neighborhoods to schools because they felt they had no alternative for achievement of quality education. R. Tr. 4/29/83 at 3-27.

The district court had a duty to receive evidence and make the findings necessary to determine whether the settlement actually did offer black children two viable ways to achieve the equal educational opportunity to which they are entitled, *i.e.* to bus to a suburban school or to remain in a city school offering comparable educational facilities and instruction. Without such findings the interests of the black students who will remain in the city school district were compromised without the due process of law required by the Fifth Amendment.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the Eighth Circuit.

Respectfully submitted,

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